



SUPREME COURT OF WESTERN AUSTRALIA

PROPOSED PRO BONO SCHEME IN THE COURT OF APPEAL

The Court of Appeal proposes to implement a pro bono scheme (Scheme) in relation to criminal appeals in which the appellant is a self-represented litigant (SRL). Counsel will assist the Court by preparing the appellant's case in compliance with the *Supreme Court (Court of Appeal) Rules 2005 (WA)* (CoA Rules) and, if requested, by appearing at the hearing of the application for leave to appeal or the appeal. Where required, and consistent with current practice, the Court will prepare appeal books for the SRL.

The Scheme will operate in relation to both appeals against sentence and against conviction

The Scheme will not operate in relation to appeals under Part 2 – Division 3 of the *Criminal Appeals Act 2004 (WA)*.

Proposed Operation of the Scheme

Pro bono counsel

1. A list of counsel (List) who are willing to participate in the Scheme (Pro Bono Counsel) will be provided to the Court by the Western Australia Bar Association. The List is to include a category of Pro Bono Counsel who are

not only willing to participate in the Scheme but, due to their experience in the criminal jurisdiction, are also willing to provide assistance as consultants to Pro Bono Counsel on the List if requested.

2. The List is to be updated annually by the Western Australia Bar Association and submitted to the Acting Court of Appeal Registrar by the 1st of July in each year beginning 1 July 2025.
3. Participation in the Scheme by all counsel and not only counsel with experience in the criminal jurisdiction is strongly encouraged.
4. Counsel without experience in the criminal jurisdiction should participate in appeals against sentence.
5. Participation in the Scheme will be limited to no more than one appeal matter per Pro Bono Counsel per year.
6. A request for assistance will only be made in circumstances where Legal Aid WA has confirmed that there is no current grant of aid and no pending application for a grant of aid or review of a refusal to make a grant. The Scheme will still operate even if there has been a negative assessment as to the merit of the appeal by Legal Aid WA or by a legal practitioner to whom a grant of aid has previously been given.
7. Where the Court requests the assistance of Pro Bono Counsel, the Court will not require Pro Bono Counsel to formally file an appearance on behalf of the SRL unless Pro Bono Counsel is requested by the Court to appear at the hearing of the application for leave to appeal or the appeal.

8. At the direction of the Court, requests for assistance will be made by the Acting Court of Appeal Registrar directly to Pro Bono Counsel.

9. The procedure for making requests for assistance will generally be as follows:

Sentence Appeals

(i) The Acting Court of Appeal Registrar will, subject to confirmation from the Court, request assistance directly from the next available Pro Bono Counsel in order of appearance on the List.

Conviction Appeals

(ii) It is recognised that appeals against conviction may be more complex than appeals against sentence. The Court will therefore give consideration, on a case by case basis, to the suitability of Pro Bono Counsel on the List (regardless of order of appearance) prior to the Acting Court of Appeal Registrar contacting Pro Bono Counsel directly with a request for assistance.

10. Pro Bono Counsel will be provided with the following:

- (i) a short summary of the appeal matter;
- (ii) a copy of the appeal notice;
- (iii) the transcript of any Directions Hearing;
- (iv) relevant parts of the transcript in the primary Court; and
- (v) a copy, if any, of a non-compliant appellant's case or any other relevant documents lodged by the SRL.

Further documents may be provided by the Acting Court of Appeal Registrar on a case by case basis following discussions with Pro Bono Counsel.

11. On receipt of the documents mentioned in paragraph 10 above, Pro Bono Counsel will engage with the SRL in accordance with Pro Bono Counsel's

usual practice in relation to taking instructions, giving advice, keeping documents and keeping litigants informed.

12. Pro Bono Counsel must obtain the SRL's express consent to receiving legal assistance pursuant to the Scheme from Pro Bono Counsel.

13. Having obtained the SRL's express consent to receiving legal assistance from Pro Bono Counsel pursuant to their usual practice, Pro Bono Counsel will prepare the appellant's case in accordance with the CoA Rules.

14. The appellant's case is to be signed by the SRL and not by Pro Bono Counsel. The signed appellant's case must then be lodged for filing with the Court.

15. Should Pro Bono Counsel become unwilling or unable to complete the request for assistance then Pro Bono Counsel must write to the Acting Court of Appeal Registrar setting out the reasons for the unwillingness or the inability to complete the request. The matter will then be referred to the Court for consideration.

Appeals against sentence

1. When the appellant's case is filed it will be referred to the Court to consider the application for leave to appeal (Leave Application).

2. The Leave Application may be listed for summary determination by the Court, may be referred to the hearing of the appeal, alternatively, leave to appeal may be granted.

3. Pro Bono Counsel may be requested to appear at the summary determination hearing or at the hearing of the appeal and, if requested, will be required to file a notice of acting (Form 5) in accordance with the CoA Rules. The notice of acting should state that counsel is Pro Bono Counsel.

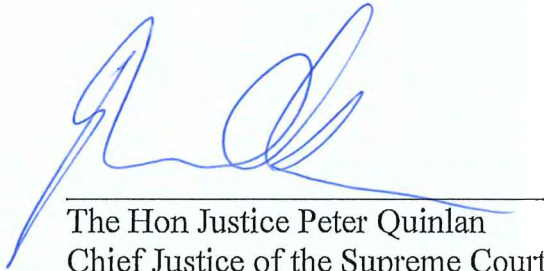
Appeals against Conviction

1. The same procedure as set out above in paragraphs 1 to 3 will apply in relation to appeals against conviction.
2. However, the following additional provisions will apply in relation to appeals against conviction:
 - (i) Pro Bono Counsel will only be required to consider whether a conviction should be set aside because of an error of law by the primary judge or whether there was a miscarriage of justice pursuant to Section 30(3)(b) and (c) of the *Criminal Appeals Act 2004* (WA) (CAA).
 - (ii) Pro Bono Counsel will not be required to assist a SRL in preparing a ground of appeal and submissions in support of that ground which requires a review of the entire trial transcript and all the exhibits tendered at trial, including a ground alleging that the verdict of guilty on which the conviction is based should be set aside because, having regard to the evidence, it is unreasonable or cannot be supported pursuant to Section 30(3)(a) of the CAA (Unreasonable or cannot be supported Appeal Ground) or a ground alleging a miscarriage of justice on the basis of incompetence of trial counsel.
 - (iii) In the event that a SRL wishes to pursue a ground of appeal that requires a review of the entire trial transcript and all the exhibits

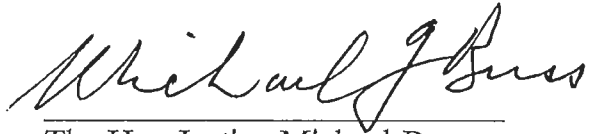
tendered at trial then the Court may direct the SRL to file and serve a supplementary appellant's case pursuant to Rule 47(3)(b) of the CoA Rules.

- (iv) In the event that Pro Bono Counsel is requested to appear at the summary determination hearing or at the hearing of the appeal, Pro Bono Counsel will not be required to make any submissions in relation to any ground requiring a review of the entire trial transcript and all the exhibits tendered at trial. Where a SRL wishes to pursue any such ground and has filed a supplementary appellant's case, the SRL may address that ground at the hearing.

Dated: 7 May 2024



The Hon Justice Peter Quinlan
Chief Justice of the Supreme Court of
Western Australia



The Hon Justice Michael Buss
President of the Court of Appeal of
Western Australia